

Training Workshop

Female Genital Mutilation and Family Law

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Training Workshop Schedule

- 13.00-13.05: Introduction to the training workshop
- 13.05-13.25: Overview of the practice of FGM
- 13.30-13.50: Introduction to criminal legislation: Female Genital Mutilation Act 2003, the Serious Crime Act 2015, and further recommendations for legal change
- 13.50-14.15: Female Genital Mutilation Protection Orders
- 14.15-14.35 Break**
- 14.35-15.00: FGM and care proceedings
- 15.00-15.20: Medical examinations in cases of FGM
- 15.20-15.35: Breast ironing: Exploring the practice, and legal remedies available
- 15.35-16.00: Dealing with FGM on the ground: *National FGM Centre & FORWARD*
- 16.00-16.30: Questions
- 16.30-18.00: Drinks/networking**

Overview of the practice of FGM

**Warning: Images shown on the following slides are graphic, and may result in people feeling uncomfortable*

What is FGM?

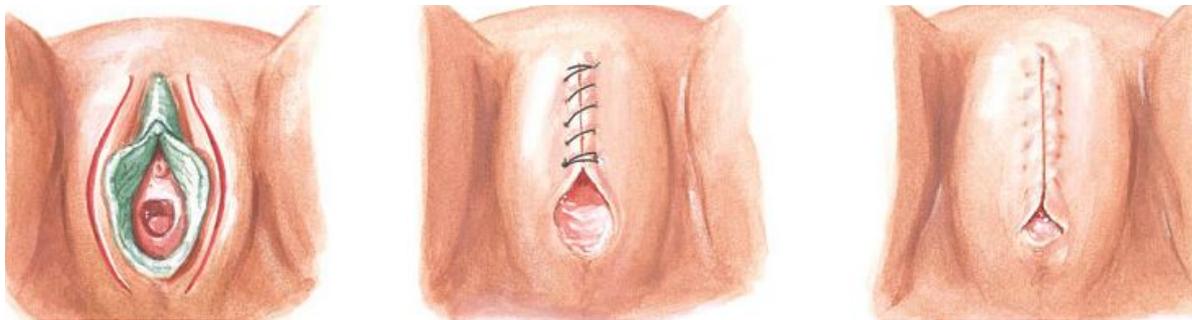
Type I — Partial or total removal of the clitoris and/or the prepuce (clitoridectomy).



Type II — Partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision).

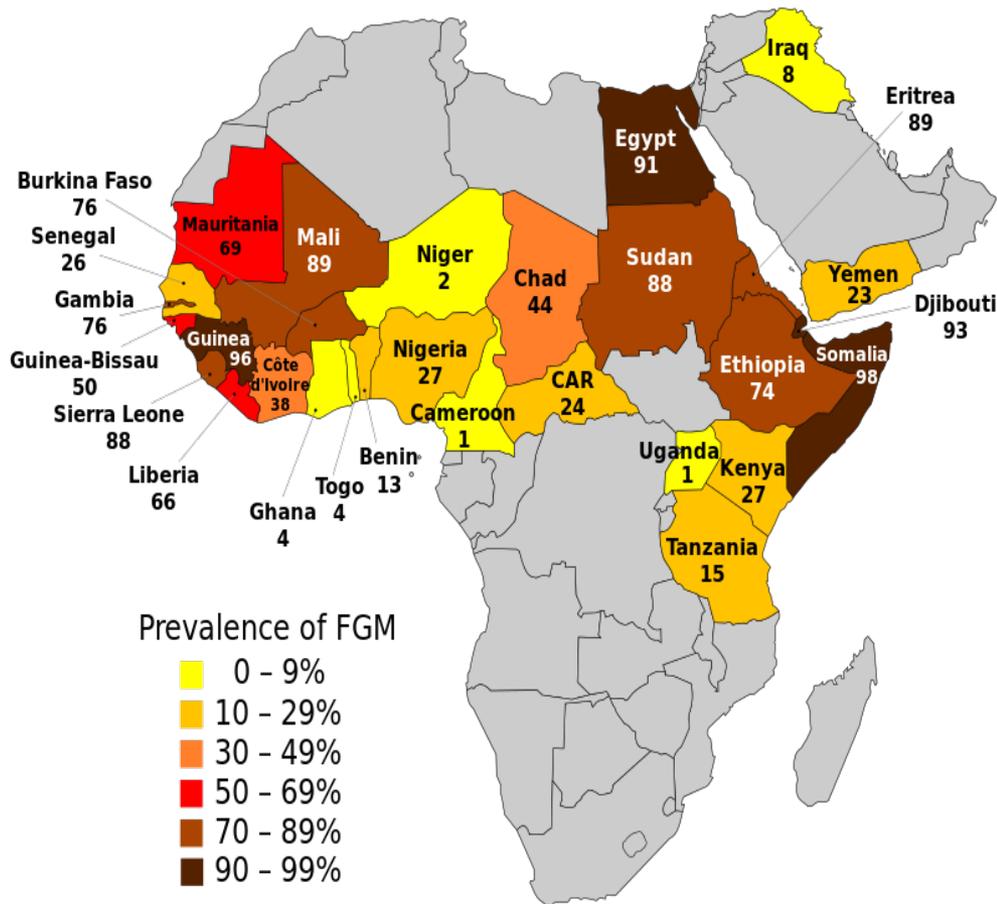


Type III — Narrowing of the vaginal orifice with creation of a covering seal by cutting and positioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation).



Type IV — All other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, piercing, incising, scraping and cauterisation.

Where is FGM performed?



At least 200 million girls and women alive today have undergone FGM in 30 countries.

Half of the girls, and women who have been cut live in three countries – Egypt, Ethiopia and Indonesia

(UNICEF, 2016).

Note the UN map does not include the Middle East.

Prevalence in England and Wales

Data estimates from *Equality now and City University* (2014):

- Over 130,000 women are estimated to be living with FGM in the UK
- 60,000 girls under the age of 15 are at risk of FGM in the UK

Data from the *Health & Social Care Information Centre* showed that during April 2015 to March 2016 there were:

- 5,702 newly recorded cases of FGM reported.
- 106 girls under 18 were reported to have undergone FGM.
- 43 cases involved women and girls born in the UK [40% had undergone type IV piercing].

Type of FGM

Type of FGM	Type I	Type II	Type III	Type IV and not known
England	893	789	573	136

Consequences of FGM

According to the World Health Organisation, FGM has no health benefits. It interferes with the natural functions of girls' and women's bodies.

Physical

- ❖ *Short term:* Infections, severe pain, urine retention, and tetanus.
- ❖ *Long term:* Pain and discomfort during sex, chronic pain, uterus, vaginal and pelvic infections, cysts, abscesses, difficulties in menstruation, and fertility problems.

Psychological

- ❖ Severe psychological trauma, including flashbacks, panic attacks, anxiety and depression.
- ❖ Women who have undergone FGM have the same levels of Post Traumatic Stress Disorder (PTSD) as adults who have been subjected to early childhood abuse, and that the majority of the women (80 per cent) suffer from affective (mood) or anxiety disorders.

Social

- ❖ Source of personal and collective identity, social position and respect, as well as power in the household.
- ❖ Failure to conform leads to difficulty in finding a husband, shame, stigmatisation, loss of social position, honour and protection, resulting in the family's social exclusion in the community.

Motives for FGM

The roots of FGM are complex and multi-faceted. The reasons for the practice often reflect the views of the practicing community. Justifications given usually relate to the following categories:

- ❖ Gender and sexuality
- ❖ Religion
- ❖ Culture and tradition
- ❖ Resistance



Introduction to Criminal Legislation

Female Genital Mutilation Act 2003

Female genital mutilation has been a criminal offence since 1985, and yet there has not been one successful prosecution.

Why?

- Difficulties of gathering evidence;
- FGM is performed on girls/babies;
- FGM is performed abroad;
- Professionals unaware FGM is a criminal offence; and
- Professionals fear intervening due to ‘race anxiety.’

Section 1: Offences of FGM

1. It is a criminal offence to excise, infibulate or otherwise mutilate the whole or any part of a girl's labia majora, labia minora or clitoris
2. But no offence is committed by an approved person who performs –
 - a. a surgical operation on a girl which is necessary for her physical or mental health, or
 - b. a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth.
3. The following are approved persons -
 - a. in relation to an operation falling within subsection (2)(a) a registered medical practitioner,
 - b. in relation to an operation falling within subsection (2)(b) a registered medical practitioner, a registered midwife, or a person undergoing a course of training with a view to becoming such a practitioner or midwife.
4. There is also no offence committed by a person who -
 - a. performs a surgical operation falling within subsection (2)(a) or (b) outside the United Kingdom, and
 - b. in relation to such an operation exercises functions corresponding to those of an approved person
5. For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual

Section 2 Offence of assisting a girl to mutilate her own genitalia

A person is guilty of an offence if he aids, abets, counsels or procures a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris.

Section 3 Offence of assisting a non-UK person to mutilate overseas a girl's genitalia

1. A person is guilty of an offence if he aids, abets, counsels or procures a person who is not a United Kingdom resident to do a relevant act of female mutilation outside the United Kingdom.
2. An act is a relevant act of female genital mutilation if
 - a. it is done in relation to a United Kingdom national or a United Kingdom resident, and
 - b. it would, if done by such a person, constitute an offence under section 1
3. But no offence is committed if the relevant act of female genital mutilation
 - a. is a surgical operation falling within section 1(2)(a) or (b), and
 - b. it is performed by a person who, in relation to such an operation, is an approved person or exercises functions corresponding to those of an approved person.

Section 3 Offence of assisting a non-UK person to mutilate overseas a girl's genitalia

- This section makes it an offence for a person in the UK to aid, abet, counsel or procure the performance outside the UK of a relevant FGM operation that is carried out by a person who is not a UK national or permanent UK resident or UK habitual resident.
- This offence only applies where the victim of the FGM operation is a UK national or permanent UK resident or UK habitual resident.
- So the person who, for example, arranges by telephone from his home in England for his UK national daughter to have an FGM operation carried out abroad by a foreign national (who does not live permanently in the UK) commits an offence.

Serious Crime Act 2015

4 key changes

1. Offence of FGM: Extra-territorial Acts

- The Female Genital Mutilation Act 2003 (2003 Act) was originally concerned with acts done by UK nationals or permanent UK residents to girls or women who are UK nationals or permanent UK residents.
- The Serious Crime Act amends sections 1 to 3 of the 2003 Act so that it applies to UK nationals and habitual residents.

2. Anonymity for victims of FGM

- Injunctions are available to prohibit the publication of any matter that could lead the public to identify the alleged victim of an offence under the Act.
- The prohibition lasts for the lifetime of the alleged victim.
- The rationale is that anonymisation will encourage women and girls to report FGM offences committed against them, and to increase the number of prosecutions.

3. Offence of failing to protect a girl from risk of FGM

- A new offence of failing to protect a girl under the age of 16 from risk of FGM is introduced into the 2003 Act.
- A person is liable for the offence if they are responsible for a girl at the time when an offence is committed against her AND when FGM has actually occurred.
- The term "responsible" covers two classes of person:
 - first, a person who has 'parental responsibility' for the girl and has 'frequent contact' with her, and,
 - second, any adult who has assumed responsibility for caring for the girl in the manner of a parent, for example, grandparents who might be caring for the girl during the school holidays.

Defence

It is a defence for a defendant to show that:

- a. at the relevant time, the defendant did not think that there was a significant risk of FGM being committed against the girl, and could not reasonably have been expected to be aware that there was any such risk; or
- b. the defendant took such steps as he or she could reasonably have been expected to take to protect the girl from being the victim of an FGM offence.

A person is taken to have shown the fact mentioned above if:

- a. sufficient evidence of the fact is adduced to raise an issue with respect to it, and
- b. the contrary is not proved beyond reasonable doubt.

Where a person has frequent contact with a girl which is interrupted by her going to stay somewhere temporarily, that contact is treated as continuing during her stay there.

4. Duty to notify police of FGM

- A duty is placed on persons who work in a 'regulated profession' in England and Wales, namely healthcare professionals, teachers and social care workers, to notify the police when, in the course of their work, they discover that an act of FGM appears to have been carried out on a girl who is under 18.
- The term 'discover' would refer to circumstances where the victim discloses to the professional that she has been subject to FGM, or where the professional observes the physical signs of FGM.
- **The section does not apply to girls or women who might be at risk of FGM or cases where professionals discover a woman who is 18 or over has endured FGM.**

Further recommendations for legal change

Further recommendations and legislative changes were identified in the House of Commons Home Affairs Committee's report and the Bar Human Right's report including:

1. The introduction of a legal requirement for mandatory training for regulated professions.
2. The need to examine whether section 1(2)(a) of the 2003 Act provides a loophole for FGM to be performed under the guise of female genital cosmetic surgery on the basis that the surgery is 'necessary for physical or mental health' reasons.

1. Legal loophole: FGCS?

An 18 year-old Somali born woman, explained that two friends also from Somalia underwent FGM under the guise of FGCS in England and Wales before they married:

“My generation because they can’t practise female circumcision, female cutting, they consider other avenues like cosmetic surgery of the vagina. The younger generation are not happy with the shape of it, that’s the thing. I don’t really talk to them in that explicit language. I have friends of mine who were going to get married and they said they were not happy with how it looks so they were trying to find other ways they could enhance it. They just want it to look better because we, they are from Somalia and they are worried they have a large clitoris or something like that. So they have to get it done because they [their husbands] will see and if they go down the FGM avenues they can get negative conditions [illegal]. I have two friends who have done it. I don’t know [whether it was NHS or private]. They didn’t do it outside [the UK].

Interviewer: Was it the labia or the clitoris [that was cut]?

I am not sure they just told me they got it done. I wasn’t aware. They are in the 30s, they don’t live with their mum, and they are getting married.

Interviewer: Why don’t they have FGM instead?

Because it’s not the same I think. Anaesthetic. They will have anaesthetic. I think it’s different than the FGM but it’s not good. They weren’t happy with how it looks for cosmetic reasons. But that’s also abuse if it would be done to a young person.”

[Focus group two]

Cont... Legal loophole: FGCS?

A cosmetic surgeon explained that an African woman approached him asking for reinfibulation, closing off the introitus, to be performed for cosmetic purposes:

Interviewer: “Have you come across FGM-practising community members who have wanted their labia operated on for cosmetic reasons?”

*No I have not. I have only ever seen one patient who had undergone FGM in Africa and I decided not to operate on her or do anything surgical on her, but I referred her to a clinical psychologist. She wanted to be closed even further, further reinfibulation. I said I can't do that I'm unwilling to do that... She wanted it done because her husband wanted it”.
[Cosmetic surgeon]*

Cont... Legal loophole: FGCS?

Interviewer: “Do you know of African women who have tried to have FGM under the heading of female genital cosmetic surgery?”

*I know of women who have tried to do that but couldn't so there's some sort of discrimination going on in a way. I think she was Sudanese. She wanted to go to the clinic to make her genitals look more like they used to because that was what she was accustomed to, she's had that all her life, she thought that was normal and she didn't feel normal anymore. She wanted to make her genitals look smaller, **make the opening look smaller**. She had been opened up to give birth and she felt she wasn't normal anymore because that wasn't what she was accustomed to. She wanted to go to have cosmetic surgery on what was being offered, but **they turned her down effectively because she was from an affected community, there is no other reason because if she was a white woman she would have had the procedure. It's a weird one**”. [NGO worker]*

2. Training for professionals

Teachers have been unwilling to act in cases of FGM because it was not a priority and teachers were concerned they would be branded racist:

“At this primary school project, I was assessing the level of the girl’s English and there was this year four girl. To cut a long story short, she disclosed that she had been cut the previous summer. It was the first term of the year, so I can’t remember if that was 2007, or maybe even 2006, but the school didn’t want to know. The people at the time, and it’s not even that long ago, nobody wanted to know about FGM. It was just impossible to get any answers anywhere. What I saw was a British girl in a different group of child protection rules. It was so completely racist, and unacceptable, and unfair and cruel and I couldn’t do anything about it because no one was listening”. [Teacher]

Female Genital Mutilation Protection Orders

Section 5A and
Schedule 2 Female Genital Mutilation Act 2003

FGMPOs

- FGM Protection Orders modelled on Forced Marriage Protection Orders.
- High Court or Family Court can make an order.
- An order can be made to protect either a girl at risk of FGM or to protect a girl when FGM has been committed.
- Order can include prohibitions/restrictions and other requirements to protect a girl.
- Order may relate to conduct outside England & Wales as well as within the country.
- Consider all the circumstances inc health, safety, and well-being of the girl.
- Named respondents can be broad.
- Order for specified period of time or until varied or discharged.
- Ex parte orders can be sought.
- Breach/warrant of arrest.

FGMPOs

*Re E (Children) (Female Genital Mutilation Protection Orders) [2015] EWHC
2275 (Fam)*

A female genital mutilation protection order was made in respect of three children originally from Nigeria on 24 July 2015 by their mother.

Break

14.15-14.35

FGM and Care Proceedings

s.31 Children Act 1989

B and G (Children) (No 2) [2015] EWFC 3

- First reported case of FGM in care proceedings.
- Girl aged three allegedly undergone Type IV FGM.
- Three medical expert reports.
- Starting point: **Definition of FGM**
 - ***Section 1(1)** A person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl's labia majora, labia minora or clitoris.*

Three issues

1. Was the girl subjected to FGM as alleged?
2. If the girl was subjected to FGM as alleged, did this amount to significant harm?

Section 31(2) Children Act 1989 provides as follows:

A court may only make a care order or supervision order if it is satisfied –

*(a) that the child concerned is suffering, or is likely to suffer, **significant harm**; and*

(b) that the harm, or likelihood of harm, is attributable to –

*(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be **reasonable to expect a parent** to give to him; or*

(ii) the child's being beyond parental control.

3. What are the implications?

Medical Examinations in Cases of FGM

Medical Examination

Case Study

- Mother and father have four daughters aged 12, 10, 8, and 4 months old.
- They are Sudanese nationals. The family do not have immigration status. Their asylum application was refused; they intend to appeal.
- The midwife referred the family to social care after the mother gave birth to the 4 month old. The midwife discovered the mother had been cut, and she was concerned that the mother's daughters might be at risk of FGM.
- The social worker undertook an initial assessment. The mother stated that her elder three daughters had been cut.
- At a Child Protection Conference, the mother said the the social worker is lying, the children have not been cut.
- The parents do not consent to the children undergoing a medical examination.

Medical Examination

- The local authority does not have parental responsibility and cannot consent to either examination or treatment unless this power has been delegated by the parent in writing or in an emergency.
- When a child needs treatment and the parent(s) and/or the child(ren) refuse(s) consent, consider the following...

Specific Issue Order, Section 8 Children Act 1989

Gives directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

Child Assessment Order, Section 43 Children Act 1989

(1) *On the application of a local authority or authorised person for an order to be made under this section with respect to a child, the court may make the order if, but only if, it is satisfied that—*

(a) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm;

(b) an assessment of the state of the child's health or development, or of the way in which he has been treated, is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer, significant harm; and

(c) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an order under this section.

Interim Care Order/Emergency Protection Order, Children Act 1989

FGM Protection Orders

Section 1 (3) *An FGM protection order may contain—*

(a) such prohibitions, restrictions or requirements, and

(b) such other terms, as the court considers appropriate for the purposes of the order.

Breast Ironing



Breast ironing, also known as breast flattening, is the pounding and massaging of a pubescent girl's breasts, using hard or heated objects, to prevent breasts from developing.

Prevalence of breast ironing

- According to UN estimates, up to 3.8 million girls worldwide are affected.
- Breast ironing is particularly widespread in the West African nations of Cameroon, Guinea-Bissau, Chad, Togo and Benin.
- "In Cameroon, up to 50 per cent of girls as young as ten years old undergo terribly painful breast ironing on a daily basis," says the UN.
- The prevalence rate, method, rationale, and reported outcomes vary significantly by region and individual, and have no proven correlation with socio-economic level, urban or rural living, religious affiliation, or ethnicity.
- Approximately 1,000 girls in West African communities across the UK have been subjected to the practice.

Motives

- Breast ironing in its current form may have proliferated as a response to a growing social need to discourage pre-marital sexual activity.
- As women gain access to education and careers, there is an increased incentive to marry later to allow a woman to attain a higher level of education before becoming a mother.
- However, during the time period between menarche and marriage, a woman is fertile and therefore at risk of becoming pregnant before marriage.
- The cultural stigma against pre-marital sex and pregnancy remains.
- Breast ironing may have emerged as a coping mechanism for women with few options, with the intention of creating the illusion that a teenager is still a child, in turn allowing the girl to continue her studies and secure a job before becoming a mother.

Perpetrators

Breast ironing is performed most often by the girl's own mother, but also by a nurse or caretaker, aunt, older sister, grandmother, the girl herself and, in a minority of cases, by a traditional healer, father, brother, cousin, friend...

Tools

Tools used include a grinding stone, a wooden pestle, a spatula or broom, a belt to tie or bind the breasts flat, leafs thought to have special medicinal or healing qualities, napkins, plantain peels, stones, fruit pits, coconut shells, salt, ice, and others.

Typically, the object is heated in the ashes of a wood fire in the kitchen and then applied in a pressing, pounding, or massaging motion.

Medical impact

- To date, no medical studies have been conducted on breast ironing, nor the long- and short-term, physical and psychological side effects.
- Often cited side effects include an immediate delay or halting of breast growth; swelling, burning, irritation, pimples on the breasts, abscesses, fever, extreme pain; a long-term overgrowth of one or both breasts or failure for one or both breasts to grow; difficulty to breast-feed; scarring; and breast cancer.
- Additionally, many girls report suffering psychological distress including internalising blame, experiencing perpetual fear and shame, or resulting social exclusion

1. Legal remedies available

- Criminal law
- Family law
 - a. Care proceedings
 - b. Inherent jurisdiction

2. Proposed legislative changes

- Create a specific offence
- Mandatory reporting
- Training of professionals
- Breast Ironing Protection Orders

Dealing with cases of FGM on the ground

NATIONAL FGM CENTRE

FORWARD

Questions?